GOVERNMENT OF INDIA
PANCHAYATI RAJ
LOK SABHA

UNSTARRED QUESTION NO:153
ANSWERED ON:22.11.2006
TASK FORCE ON JURISPRUDENCE
Badiga Shri Ramakrishna;Singh Shri Chandra Bhushan

Will the Minister of PANCHAYATI RAJ be pleased to state:

(a) whether the Task Force on Jurisprudence set up by the Government has submitted its Report;

(b) if so, the details of recommendations made by them;

(c) whether the said Task Force has recommended that Panchayat elections at all the three tiers should not be held on party basis;

(d) if so, the views of the Ministry in this regard; and

(e) the terms of reference of the Task Force?

Answer

MINISTER OF STATE IN THE MINISTRY OF PANCHAYATI RAJ (SHRI MANI SHANKAR AIYAR)

(a) to (b): Yes, Sir. A summary of their recommendations is attached at Annex- A.

(c) to (d): Yes, Sir. The Ministry does not agree with this recommendation.

(e): While specific Terms of Reference of the Task Force on Jurisprudence was left to the Task Force, it was decided by the Task Force to deal with the following:-

(i) As there is a large amount of litigation related to Panchayati Raj and about 90% of these are related to individual elections, these need resolution.

(ii) It was felt necessary to consider uncertainties, ambiguities and inconsistencies in the body of jurisprudence that have evolved since the passage of PR legislation by Parliament and the States. The Recommendation was made that the Task Force would review and categorize the decisions of courts with a view to preparing a list of jurisprudential points by networking with institutions such as the Bar Association of India, the Indian Law Institute, The Rural Litigation and Entitlement Kendra (RLEK), the Institute of Social Sciences, the Society of Indian Law Firms and other expert bodies.

(iii) Issues of legal and judicial interpretation raised over the years have been categorized as follows:
(a) Elections
(b) Election Process
(c) Reservation
(d) Delimitation
(e) Qualification and Disqualification
It also recommended that the Union Ministry would attempt to provide clarifications or attempt to provide for further deliberation on these issues.

(iv) Any other issue to be decided by the Task Force.

Annex-A
Chapter 8
RECOMMENDATIONS AND SUGGESTIONS
8.1 Eections

Panchayat elections are very contentious. Regularising them in a five yearly period will help avoid the judicial ill will

A uniform procedural pattern throughout the country, with similar officials having similar powers with regard to the conduct of the elections.

The powers of the SEC are sacrosanct and the state governments should not tinker with their powers, lest such tinkering violates the constitutional mandate.

The Returning Officers should be aware of their powers and responsibilities. Since a large number of cases pertain to recounting, countennanding etc, the returning officers should know where to interfere and where to ask for help from the SEC.
The election tribunal`s powers should be as close to that of a `court` Under the CPC as possible. This will prevent litigation regarding the jurisdiction of the tribunal, which are quite unnecessary.

Now it is well settled that Art. 243(O) cannot oust the writ jurisdiction of the HC. However, once the election process starts, the High Courts will be too cautious to interfere. This is evident from the stay given by the Division Bench of the A.P High Court on the Single Bench decision, on the grounds that election process has already started.

For deciding quorum, if the total elected members are being considered, then the state legislature should make it clear how the majority is to be calculated. This means that they should put down precisely in the statute/rules whether only the valid votes would be considered or otherwise.

As far as reservations to Chief Functionary`s post are concerned we tend to go with the Kerala High Court view, to the effect that the office of the president of a gram panchayat can be reserved for Women belonging to SC/ ST, as it is perfectly within the constitutional mandate and not with the decision of the Calcutta High Court.

Though the electoral rolls prepared by the Election Commission of India for general elections may be adopted, but updating the same for panchayat elections shall be the sole responsibility of the SEC. It constitutes the backbone of any democratic process and has to be carefully done. In many parts of rural India, where people are unaware of the need to get their names included in the voters list, it is imperative that traditional methods like `Tom-Tom`ing be employed. Also, they may take the assistance of social organizations to make the people aware of their duty to get themselves enrolled.

8.2 Suspension/removal

Since both suspension and removal lead to temporary or permanent displacement ofan elected functionary, it should have more stringent criteria and these criteria have to be strictly followed.
On a trial basis, Panchayats may be given the power to do both these by a resolution. The majority required and other procedural stipulations for these resolutions may be different from that of a no-confidence motion, to the extent of avoiding confusion. If required, it could be provided in the statute that the collector or similar official may suspend/remove a functionary, but only after a resolution to the effect has been passed by the panchayat. This would ensure that the process remains participatory without excessive intervention by executive authorities.
The efforts made by some states like Orissa to completely take away a collector`s power to suspend may be closely monitored and adopted if it succeeds.

8.3 No-confidence motion

Specific provisions have to be given for removal and no-confidence motion. Both should not be bundled up.

The notice for the motion may ideally be given to the Chief Functionary or his deputy. If he does not call the meeting within a specified period, then the members must themselves be able to call the meeting. The quorum for such a meeting may be `1/3rd of the total elected members` or a near about figure. There should be a provision where the Collector or any other official should be intimated about the meeting.
In the alternative, the Assam model may be resorted to if the state governments find it more conducive. The Assam model provides for a hierarchical panchayat supervision pattern. Whatever mode is employed, the executive`s hold over panchayat resolutions and motions have to be reduced.

A revision/appeal provision may be included. The only other remedy would be to file a writ petition.

Sometimes it is necessary to make a procedural provision mandatory so as to ensure effective functioning of the system. In such cases, it is suggested that a consequence be prescribed for the violation of the provision. So long as this consequence is prescribed, the court would construe the provision to be mandatory. Else there is always a possibility of the court overlooking a non- compliance with procedure.

A gap of 6 months should be the maximum statutorily stipulated period for the presentation of a fresh no-confidence motion, after the rejection of the first motion.

8.4 Disqualification

Disqualification for non attendance of meetings-it has to be provided in the Panchayat statute that the 3 consecutive meetings should be sufficiently spaced out to entail disqualification for non-attendance. The spacing may also be clearly indicated.

For the two-child norm, states which have a provision to the effect should also clarify the position regarding the birth of twins etc to avoid any conflicting decisions on the issue.

The disqualification for violation of party whip is totally antithetical to the concept of Panchayati Raj. It was believed that the panchayats would not suffer from party based politics, Though party politics has become institutionalized at the panchayat level. we strongly recommend that panchayat elections at all the three tiers should not be held on party basis, This would automatically take out the need for whip and defection provisions from the statutes. Non-party elections would be conducive to stability and development in the panchayat framework. Further. it would also avoid the rift between the state government and the panchayat administrations especially if different parties are in power.

8.5 Miscellaneous

8.5.1 Notification of villages/delimitation of constituencies

These should be done. as far as possible. during the tenure of a panchayat. but way before elections are notified. This would help to avoid accusations of gerrymandering.

These should be applicable only from the term of the next panchayat.

Though the state government has the final word. it is advisable that the people of the panchayat be given the opportunity to give in their views on the issue. This will give the whole process greater transparency and popular support.

The power to delimit should be vested in the SEC

8.5.2 Power of panchayats

Panchayats should be given greater autonomy and there should be minimum interference by executive authorities.

The resolutions passed by the panchayats should be made non-reversible by executive authorities.

An efficient social auditing mechanism will help to make the panchayats more accountable to the people. This will also make the state government a lot more relaxed while devolving funds and functions to the panchayats.

Parallel bodies like Village/ Rural Development Committees. etc should be abolished and every development work should be undertaken by and through panchayats.

All the welfare projects should be executed through panchayats.